

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Government.

v.

Case No. 98-80695

FAWZI MUSTAPHA ASSI,

Defendant.

---

SENTENCE HEARING

BEFORE THE HONORABLE GERALD E. ROSEN  
United States District Judge  
733 US Courthouse & Federal Building  
231 Lafayette Boulevard West  
Detroit, Michigan  
Friday, December 12, 2008

APPEARANCES:

ROBERT CARES  
Assistant United States Attorney  
211 West Fort Street  
Detroit, MI 48226  
On behalf of the Government.

JAMES C. THOMAS  
535 Griswold Street  
Detroit, MI 48226  
On behalf of the Defendant.

- - -

To Obtain a certified transcript:  
Carol S. Sapala, RMR-FCRR  
313.961.7552

C O N T E N T S

---

IDENTIFICATION	PAGE
Sentence Hearing	4
Certificate of Court Reporter	56

E X H I B I T S

---

None Marked

Sentence Hearing

1 Detroit, Michigan

2 Friday, December 12, 2008

3 12:15 p.m.

4 THE COURTROOM DEPUTY: Case number

5 98-80695, USA versus Fawzi Assi.

6 THE COURT: Appearances, please.

7 MR. CARES: Robert Cares representing the  
8 United States.

9 MR. THOMAS: Your Honor, my name is James  
10 Thomas. I'm appearing on behalf of Mr. Assi.

11 THE COURT: All right.

12 Mr. Thomas, Mr. Cares, could you approach  
13 the podium, please.

14 Mr. Thomas, I know you have reviewed the  
15 Presentence Report and you have filed with the court  
16 in response to the Presentence Report a number of  
17 objections drafted by your client that you filed for  
18 your client.

19 MR. THOMAS: I have.

20 THE COURT: Do you wish to address any of  
21 those objections here?

22 MR. THOMAS: Mr. Assi and I had an  
23 opportunity to talk beforehand.

24 He's indicated he wishes to argue some  
25 portion of those objections, that I would argue the

Sentence Hearing

1 others.

2 And then, of course, he's going to have  
3 his right to allocute.

4 I would like to clear up whatever those  
5 objections are that we -- that he has. And then to  
6 the extent he has to or feels he has to supplement,  
7 I'll ask him to ask the Court for permission to do  
8 that.

9 The Court is aware he's filed a motion to  
10 represent himself on certain issues in the  
11 sentencing. He's taking the position now that I  
12 should do some, he should do others.

13 I certainly will agree to do whatever it  
14 is that he wants and subject to your direction.

15 THE COURT: That's fine.

16 As I indicated to counsel when I met  
17 briefly with counsel before we went on the record, I  
18 I intend to give Mr. Assi an opportunity to address  
19 some of these issues on his own.

20 And then I'll give him an opportunity to  
21 address allocution separate and aside from these  
22 issues, but the opportunities are going to be brief.

23 This is, perhaps with one exception, the  
24 most intensively litigated case that this Court has  
25 had in 19 years on the bench.

## Sentence Hearing

1           It has been litigated vigorously by the  
2 government. It has been defended vigorously by both  
3 Mr. Thomas on behalf of Mr. Assi and by Mr. Assi  
4 himself in what I can only characterize as extensive  
5 pleadings, motions, letters and all manner of other  
6 items that the Court has received directly from Mr.  
7 Assi in which it has told Mr. Assi on numerous  
8 occasions it would send back to his lawyer.

9           So I believe that I have a full  
10 appreciation of all of the issues in the case.

11           In addition to that, I have rendered a  
12 number of decisions in this case concerning all of  
13 the legal issues in the case and have addressed  
14 fully those legal issues.

15           So with respect to any legal issues  
16 concerning the constitutionality, for example, just  
17 for example, the constitutionality of the material  
18 support statute, the constitutionality of the  
19 guideline enhancement under 3A1.4, the applicability  
20 of the enhancement to the allegations against Mr.  
21 Assi and any number of other legal issues, this  
22 Court has already opined on them and I don't believe  
23 it is appropriate at sentencing for the Court to  
24 hear legal argument on those issues.

Sentence Hearing

1           So I intend to give Mr. Assi an  
2 opportunity to address objections to the Presentence  
3 Report, but I'm advising both Mr. Thomas and Mr.  
4 Assi that where those objections seem simply an  
5 attempt to relitigate issues that have already been  
6 decided by the Court, I'm not going to hear them.

7           All right, Mr. Thomas?

8           MR. THOMAS: Judge, we have litigated the  
9 issue regarding the terrorism enhancement. The  
10 Court has issued an opinion as a result of the  
11 numerous hearings we had.

12           We had a Rule 11 Plea Agreement which we  
13 had the opportunity to discuss when we approached  
14 the bench just before the defendant was brought in.

15           And it's my position that Defendant Assi's  
16 Supplemental Sentencing Memorandum which is dated  
17 July 15 2008, is filed.

18           And that to the extent that it does --

19           THE COURT: I should also add one other  
20 thing. I'm sorry to interrupt you.

21           I should also add that the Supplemental  
22 Sentencing Memorandum included a number of letters  
23 on behalf of Mr. Assi which I have read.

24           MR. THOMAS: Right.  
25

Sentence Hearing

1 THE COURT: And --

2 MR. THOMAS: But this one in particular is  
3 the one that really addresses the issue relating to  
4 terrorism enhancement, the Rule 11 Plea Agreement,  
5 while, when we did plead and there was a discussion  
6 on the record, we looked at the transcript at the  
7 bench.

8 And it's my opinion that the defendant  
9 does have at least a right to appeal the issues  
10 relating to the terrorism enhancement and the  
11 Court's ruling on that.

12 So to the extent that this July 15th  
13 pleading attempts to supplement the record, I'm not  
14 going to argue any further relating to that.

15 All right. That's in the record. He has  
16 his right to appeal and on that -- only that very  
17 discrete issue and that's where I'm going to leave  
18 it.

19 He did ask for self representation related  
20 to that. But to the extent he is re-litigating the  
21 issue, I heard what the Court said. I'm not going  
22 to add anything further.

23 THE COURT: Let me just indicate I was  
24 going to put this on the record at a later date,  
25 later time in this proceedings, but since you've

Sentence Hearing

1 raise it, Mr. Thomas.

2           The Court reviewed -- before coming out on  
3 the bench, the Court reviewed the plea agreement and  
4 it looked to the Court as if Mr. Assi had, in fact,  
5 waived under the strict language of the plea  
6 agreement, it looked to the Court as if Mr. Assi  
7 waived his right to appeal any decision of the  
8 Court, including the applicability of the terrorism  
9 enhancement.

10           However, the Court then reviewed the  
11 transcript from the plea proceeding and saw that the  
12 Court explicitly visited with counsel on the issue  
13 of the scope of the waiver of appeal.

14           And it was made clear on the record by  
15 both Mr. Thomas and by Mr. Cares, that although Mr.  
16 Assi was waiving his rights as to every other issue  
17 and every other decision made by this Court, his  
18 rights of appeal, he was not, however, waiving his  
19 rights of appeal as to the Court's determination on  
20 the applicability of guideline 3A1.4, the so-called  
21 terrorism enhancement. I've confirmed that.

22           And when I complete the sentence and  
23 advise Mr. Assi of his appellate rights, I will  
24 again advise him of exactly that, that he has waived  
25 all rights of appeal as to his conviction or his

## Sentence Hearing

1 sentence, other than his right to appeal the Court's  
2 determination of the applicability of terrorism  
3 enhancement guideline.

4 I'd ask counsel, now, to acknowledge that  
5 that is their understanding and a correct  
6 interpretation of the plea agreement between the  
7 parties, even though the plea, itself, may not  
8 strictly reflect that.

9 Is that right, Mr. Cares?

10 MR. CARES: That is right, Your Honor.

11 MR. THOMAS: Yes, Judge.

12 THE COURT: I understand how it may have  
13 happened. The Court should add this plea was long  
14 in coming. It went through many iterations as was  
15 explained to the Court.

16 And I think that perhaps initially it was  
17 the government's position that Mr. Assi be required  
18 to waive any and all rights of appeal, including the  
19 terrorism enhancement, the applicability of  
20 terrorism enhancement.

21 But by the time we got to -- by the time  
22 we got to the plea, it was made clear on the record  
23 that Mr. Assi has preserved his right to appeal the  
24 Court's ruling on that issue.

Sentence Hearing

1 Is that an accurate recitation?

2 MR. CARES: That's correct, Your Honor.

3 THE COURT: Is that what happened here,  
4 Mr. Thomas?

5 MR. THOMAS: It is, judge.

6 We've also filed -- I have filed on his  
7 behalf, a second Sentencing Supplemental Memorandum  
8 which I gave to Mr. Cares and to Probation and that  
9 consisted of a series of letters.

10 As I understand, we've agreed to a ten  
11 year cap as relates to this particular charge.

12 Interestingly, the statute was changed to  
13 allow for a 15 year sentence; that would have been  
14 an *ex post facto* issue, so the cap was at ten years.

15 Now pursuant to *Booker and Fan-Fan* and the  
16 cases that have evolved since then, *United States*  
17 *versus Gall* and the Sixth Circuit cases after that,  
18 it's my position that the Court has the ability to  
19 take these letters into consideration, look at the  
20 advisory guidelines as they are now advisory and  
21 make a determination of what the sentence will be.

22 I may be getting ahead of myself. And the  
23 reason why I'm doing that, when I spoke to Mr. Assi  
24 today, he said to me that there were certain things  
25 in his Presentence Report that he wanted to object

## Sentence Hearing

1 to.

2 We went over these and I just want to make  
3 a record as relates to it because I don't believe  
4 that these are, in my experience, the types of  
5 things that the Court would take into consideration  
6 at sentencing in any event.

7 Presentence Report has in it a recitation  
8 of the facts, that's usually the government's  
9 version. And those facts are -- in most cases,  
10 they're disputed. But he wants me to raise these.  
11 And, for the record, I'd like to do that.

12 THE COURT: Before do you, I think it's  
13 important as well by way of context here so we have  
14 a record for appeal as to the terrorism enhancement,  
15 what underlay I think is a big part of the agreement  
16 between the parties. We went through some of this  
17 during the plea hearing.

18 Mr. Assi potentially was facing a  
19 substantial amount of time, probably 25 -- up to 25  
20 years if he had been convicted arising out of the  
21 nature of the charges, arising out of the factual  
22 predicate to the charges, arising out of the fact  
23 that he absconded for approximately six years and  
24 arising out of the potential sentences, both  
25 guideline and statutory sentences that the Court

## Sentence Hearing

1 could have imposed.

2 By arriving at the plea agreement, the  
3 defendant exceeded in capping his exposure at ten  
4 years, even in the event that the Court were to  
5 apply the terrorism enhancement, which it now has  
6 done. That was after the plea agreement. So I  
7 think that that's an important factual context to  
8 put on the record.

9 MR. THOMAS: It is.

10 And so towards that end in the Presentence  
11 Report paragraph 16, they're references to his role  
12 as a procurement agent to Hizballah.

13 It was the defendant's position both at  
14 the evidentiary hearing and afterwards, that he  
15 never used the term "Hizballah" and certainly he was  
16 not a procuring agent for Hizballah, but it was, in  
17 his terms, The Resistance.

18 In paragraph 17, that he did not advise  
19 the officers about the fact that there were these  
20 modules that were in his suitcase.

21 THE COURT: I think actually the  
22 procurement agent comment in the record is actually  
23 at paragraph 17.

24 MR. THOMAS: Paragraph 17. So I'm not  
25 looking at the Rule 11 Plea Agreement, but I am

Sentence Hearing

1 quoting that.

2 THE COURT: Are you talking about the Rule  
3 11?

4 MR. THOMAS: Of the Presentence Report.

5 THE COURT: Paragraph 17.

6 MR. THOMAS: So paragraph 17 there is a  
7 dispute as to the facts that are recited not only as  
8 relates to procurement agent for the term Hizballah,  
9 but also as relates to his advising the officer that  
10 the modules were in his luggage. They were found in  
11 his luggage.

12 Paragraph 19, that most of the items that  
13 were found in the boxes were aircraft design books.

14 The Presentence Report goes to great  
15 degree in describing the items which were relevant  
16 to the investigation.

17 But the defendant, it's obvious from the  
18 investigation, and from my contact --

19 THE COURT: Are you talking now about the  
20 literature that was found in the trash bins?

21 MR. THOMAS: That's correct, in the boxes.

22 THE COURT: That's actually paragraph 20.

23 MR. THOMAS: Judge, I should go to the  
24 Presentence Report.

25

Sentence Hearing

1 THE COURT: I think, just so that we're  
2 clear on that.

3 MR. THOMAS: I think what's going on is  
4 that there were different versions of the  
5 Presentence Report, so his quote was from possibly  
6 what was the original one.

7 THE COURT: I think the substance is the  
8 same.

9 MR. THOMAS: So to the extent that it does  
10 not describe his intellectual capabilities and  
11 intellectual curiosity to things that are  
12 legitimate, it was felt that the Presentence Report  
13 was not as explicit as it could have been. And so  
14 he objects to that.

15 THE COURT: Okay.

16 MR. THOMAS: There was another paragraph  
17 which I'm not going to number now for fearing having  
18 been corrected a third time, where other persons  
19 were suspected of being in charge of developing the  
20 UAV.

21 THE COURT: Yes.

22 MR. THOMAS: References made again in  
23 another paragraph relating to a hospital report.

24 THE COURT: Yes.

25 MR. THOMAS: And the fact that there was

## Sentence Hearing

1 an investigation as to whether or not the defendant  
2 was deportable.

3 These paragraphs are objected to, although  
4 I don't think that they are dispositive as the  
5 Court's decision as relates to sentencing.

6 THE COURT: Not only are they not  
7 dispositive, they don't enter into the Court's  
8 consideration for sentencing, they don't affect the  
9 guidelines, they really don't affect the statutory  
10 penalty at all.

11 MR. THOMAS: And the Court -- these are  
12 not the issues that the Court's focusing on for  
13 sentencing. I understand that.

14 The other two issues that he wishes to  
15 raise is that he owned his residence.

16 And that, apparently, there was a  
17 misspelling of his --

18 THE COURT: Could I ask?

19 MR. THOMAS: If I could just continue.

20 THE COURT: Which part of the --

21 MR. THOMAS: He's referring to paragraph  
22 53. There's a reference to the fact that his  
23 residence is rented. It could be a different  
24 paragraph now.

25 But the last objection he has --

Sentence Hearing

1 THE COURT: I see.

2 MR. THOMAS: -- when they were looking for  
3 him at Ford Motor Company, they apparently used the  
4 wrong spelling of his last name.

5 He obviously does have confirmed in the  
6 Presentence Report that he has a long history with  
7 Ford Motor Company.

8 THE COURT: Yes.

9 MR. THOMAS: And so as it relates to that,  
10 those objections, those are the ones he's asked that  
11 I raise.

12 Except for -- to the extent he wants to  
13 relitigate the issue regarding the terrorism  
14 enhancement now and I say that I think that based on  
15 what we've had before and what he has filed since  
16 and what the Court has now ruled on, there is a very  
17 adequate record for the appeal on that issue.

18 THE COURT: Thank you.

19 Mr. Assi, do you wish to briefly address  
20 any of the issues that you raised with the filings  
21 that Mr. Thomas has made for you?

22 Did you wish address any of those issues  
23 concerning the Presentence Report?

24 He can address the Court from right there.  
25 That's fine.

Sentence Hearing

1 THE DEFENDANT: Can I have my notes?

2 Good afternoon.

3 THE COURT: Good afternoon, Mr. Assi.

4 THE DEFENDANT: Last time I made comment  
5 what I said -- I was asked specifically during the  
6 plea hearing if I knew what I was doing was illegal.  
7 I said no. And the correct answer is supposed to be  
8 I said wrong. And I meant by wrong, politically, I  
9 didn't really know what I was doing was illegal and  
10 there was no way of me knowing what I was doing was  
11 illegal.

12 There was a comment that was made during  
13 the last hearing, enhancement hearing on June 23rd,  
14 and was mentioned in your -- in the Court's opinion  
15 on the enhancement that was filed on 10-17-2008,  
16 that the defendant Hassan, because of his status in  
17 Hizballah, which it doesn't -- really is not true in  
18 any way because all I meant to support is the  
19 resistance in Lebanon. And Hassan happened to be in  
20 Hizballah.

21 And why should I respect Hassan for his  
22 status in Hizballah if I am not a member of  
23 Hizballah in any way, never been. And I'm not.

24 And I was held to Hassan. He owed me some  
25 respect. I didn't owe him any respect.

Sentence Hearing

1 THE COURT: But --

2 THE DEFENDANT: You're trying to connect  
3 me to Hizballah. Maybe they misinterpreted  
4 something I said, but there's no connection  
5 whatsoever that I really supported Hassan for his  
6 position in Hizballah.

7 THE COURT: I think you indicated, though,  
8 at your plea, you were attempting to help what you  
9 characterized as The Resistance.

10 THE DEFENDANT: Yes. That's true. True.

11 I would like to really define Resistance,  
12 because it appears to be there's a misunderstanding  
13 of exactly what this word means.

14 Because I did mention this word in my  
15 letter, my correspondence and my one of my motions.

16 And I was, for some reason, I mean the  
17 word "Resistance" by definition means --

18 MR. THOMAS: Before we go into that,  
19 judge --

20 THE COURT: Please.

21 MR. THOMAS: -- can I have one moment?

22 (A discussion was held off the record)

23 THE COURT: I just --

24 THE DEFENDANT: Basically what I said,  
25 what I said and what I mentioned was exactly the

## Sentence Hearing

1 word that was defined in the dictionary. So it  
2 wasn't anything different than what the word  
3 "Resistance" means.

4 If I said I supported Resistance and  
5 Resistance is meant what it meant.

6 So now if I use the correct definition of  
7 the word, then I'll be reprimanded for it.

8 I was just kind of not sure whether this  
9 word is really defined. You know, we all on the  
10 same page as to what it really means.

11 Okay. Another thing that was used against  
12 the defendant in a way that Mr. Assi did not give  
13 assurances that Hizballah would not use the  
14 equipment for other purposes.

15 That was a rhetorical question when I was  
16 asked, because the government should have known that  
17 there's no assurances whatsoever.

18 So for it to be used against me in a way  
19 I -- I just found that to be --

20 THE COURT: Mr. Assi, we're now  
21 re-litigating, again, the issues that were  
22 extensively litigated before this Court as part of  
23 the hearing on the applicability of guideline 3A1.4.  
24 And the Court has addressed all of that in its  
25 October 17th opinion. And this is not really an

## Sentence Hearing

1 issue of the Presentence Report.

2 I want to you address the Presentence  
3 Report issues. You've made a complete and a full  
4 record on the issues of -- you and Mr. Thomas have  
5 very effectively made a complete and a full record  
6 on the issue of the applicability of 3A1.4, as I've  
7 indicated in the beginning of this proceeding.  
8 You've preserved that issue for appeal.

9 I know you disagree with my opinion and  
10 you'll have an opportunity to have at least three  
11 other judges look at it. But this isn't the  
12 opportunity to relitigate those issues. Okay?

13 THE DEFENDANT: That's it for now.

14 MR. THOMAS: Well, judge, he wants to  
15 raise an issue as it relates to the constitutional  
16 issues of the constitutionality of 18 USC Section  
17 2239B.

18 We have filed our motion once, there have  
19 been several successive supplemental motions to  
20 that. He's asked me whether or not he could be able  
21 to argue on that.

22 My understanding is, A, we've litigated  
23 it.

24 B, not only by motion, but supplemental  
25 motions.

Sentence Hearing

1           Then when the Court did rule, there was  
2 further pleadings after that. We're going to rely  
3 on all of those to say that the issue's been raised.

4           THE COURT: The issue has been  
5 exhaustively briefed not only by Mr. Assi's counsel,  
6 but Mr. Assi himself.

7           And the Court dealt with these issues on a  
8 number of occasions probably most comprehensively in  
9 its August 9, 2007 opinion.

10          All I can say is those issues were before  
11 the Court, the Court considered the government's  
12 position, the Court considered Mr. Assi's position  
13 and the Court decided it.

14          THE DEFENDANT: Just this particular  
15 issue, Your Honor, is not -- was not addressed and  
16 new facts came to light and I would like to address  
17 those issues to the Court.

18          THE COURT: Mr. Assi --

19          THE DEFENDANT: There's a constitutional  
20 issue, Your Honor.

21          THE COURT: Mr. Assi, I'm not going to  
22 hear legal argument. The time for all legal  
23 arguments is over with the exception of any issues  
24 that you have with the Presentence Report.

25          I'm not going to relitigate the

## Sentence Hearing

1 applicability of the guideline, I'm not going to  
2 relitigate the constitutionality of the guideline or  
3 the statute.

4 I'm not going to relitigate the  
5 constitutionality of the applicability of the  
6 guideline. All of these issues have been exhausted.

7 THE DEFENDANT: Even if new facts came to  
8 light and there is an issue, the Court is not  
9 willing to hear that?

10 THE COURT: We're not going to do that  
11 here.

12 If you believe there is no evidence, no  
13 facts, there is a legal vehicle by which to bring  
14 that to the Court. But -- and there are legal  
15 standards that apply to the presentation of new  
16 evidence or new facts and the time to do that is not  
17 at sentencing.

18 All right. I've not yet had an  
19 opportunity to hear from the government with respect  
20 to the Presentence Report.

21 Mr. Cares, on behalf of the government.

22 MR. CARES: The government has no  
23 objection to the Presentence Report.

24 THE COURT: All right.

25 Mr. Thomas, do you wish to allocute on

## Sentence Hearing

1    behalf of Mr. Assi any other issues before I hear  
2    from Mr. Assi? Do you wish to allocute on behalf of  
3    Mr. Assi?

4               As I indicated, you filed a Sentencing  
5    Memorandum and Supplemental Sentencing Memorandum  
6    which included 12 or 13 letters on behalf of Mr.  
7    Assi. I've read all of those. I appreciate having  
8    them, it gives me a fuller picture of Mr. Assi I  
9    think.

10              And do you wish to present any allocution  
11    on his behalf?

12              MR. THOMAS: Judge, the Presentence Report  
13    that was crafted in this case was very specifically  
14    detailed as to the defendant's family status.

15              The Court would have to be blind not to  
16    see the number of people who are here in court  
17    today, who have been here at every proceeding along  
18    the way.

19              I think that the family support that he  
20    has is commendable, and that his brother, Sami,  
21    standing by him in the face of these terrible  
22    charges and Sami is here today is heroic.

23              I have great respect for his family. They  
24    have been very supportive of me I want to say that  
25    on the record, I appreciate that.

## Sentence Hearing

1           The Court is aware that Mr. Assi's father  
2 passed way last week. There was some question as to  
3 whether or not he was going to be able to travel to  
4 visit his father as he was lying at rest, but that  
5 was waived by the client not being able to do that  
6 under his own power.

7           Mr. Assi voluntarily came back to this  
8 country. He has been incarcerated since 2004.

9           His incarceration has been difficult in  
10 that in the face of having all these written  
11 materials that he submitted to the Court, he has  
12 his, his review materials and his research  
13 materials.

14           In transporting him back and forth to the  
15 court, there has been times he's not been able to go  
16 back to Milan and the convenience of Milan.

17           The Court is very well of the  
18 circumstances of incarceration of people at The  
19 Wayne County Jail. It has not been an easy  
20 procedure to go this far for so long to be in  
21 detention status.

22           If he had been incarcerated in a prison,  
23 it certainly would have been much more difficult.

24           His family circumstances, his family  
25 support, the travail of being incarcerated in

## Sentence Hearing

1 anticipation of a trial, then waiting for the  
2 guideline issues to be resolved and now sentencing,  
3 these are all things that I think you can take into  
4 consideration at sentencing.

5 Now after case laws involving *Booker*, we  
6 have capped our sentence at ten years. That doesn't  
7 mean you have to give him ten years.

8 He's been from 2004-2008 incarcerated,  
9 that's a significant amount of time.

10 THE COURT: I want to confirm.

11 I think he has been detained since May of  
12 2004; is that right?

13 MR. THOMAS: May 15th.

14 PROBATION OFFICER: May 18, 2004.

15 MR. THOMAS: So I know you've read the  
16 letters, very well intended letters. They talk  
17 about him in a different context and the allegations  
18 that this Court has seen by the government's proofs.

19 His wife is still struggling medically,  
20 his mother is still struggling medically.

21 He is in many ways even incarcerated, he's  
22 the leader of his family.

23 Although I don't want to take away from  
24 the strength of Sami, Sami Assi who has been in my  
25 view my right, left and whatever other hands that I

## Sentence Hearing

1 might have.

2           So I think that this Court can take a look  
3 at the 3553 factors in the context of what was and  
4 is in the Presentence Report and in the letters and  
5 sentence Mr. Assi to a sentence that is no more than  
6 what is necessary in order to satisfy the ends of  
7 the statute and the case law that I've mentioned.

8           So I ask the Court's leniency as it  
9 relates to Mr. Assi. He has been tenacious, he has  
10 been resilient and many times he's been difficult,  
11 but he is entitled to do that charged as he is.

12           THE COURT: As I think you know, Mr.  
13 Thomas, I never in any way punish any defendant,  
14 certainly not Mr. Assi, for vigorously defending  
15 himself or herself in bringing every issue possible  
16 before the Court. And I certainly don't intend to  
17 do that with Mr. Assi as a defendant charged here  
18 with an extremely serious crime. I think that's his  
19 right to do that.

20           And I don't want that to become confused  
21 with the many occasions on which I've tried to  
22 advise Mr. Assi he should not communicate directly  
23 with the Court. That's a different issue.

24           MR. THOMAS: He's brilliant, as bright as  
25 any man I've ever encountered as a defendant.

Sentence Hearing

1           He has the capacity for great warmth. And  
2 while he may be intense, he does have that side  
3 which you haven't had a chance to see, but I have.

4           THE COURT: I've gotten, I've gotten some  
5 sense of that from the letters that you've provided  
6 to me and you have provided for me.

7           MR. THOMAS: Other than that, judge, I've  
8 nothing further.

9           THE COURT: All right.

10          Mr. Cares, before I hear from Mr. Assi, do  
11 you have anything --

12          MR. CARES: Just briefly.

13          THE COURT: -- in allocution on behalf of  
14 the government?

15          MR. CARES: If I may, Your Honor, just  
16 briefly.

17          As the Court has stated, there's been  
18 extensive litigation. I don't think there's  
19 anything I could say to the Court that the Court  
20 doesn't already know or isn't aware of. I would  
21 briefly like to point out a couple things if I may.

22          There was an extensive evidentiary hearing  
23 in this case. The Court was presented with the  
24 testimony of several witnesses as well as many  
25 exhibits.

## Sentence Hearing

1 I suspect that from comments made today by  
2 Mr. Assi and on other occasions, he may attempt to  
3 minimize what he had done.

4 For example, he used the word  
5 "Resistance". That's all he said.

6 I would just point out to the Court at the  
7 time of Mr. Assi's pleading guilty and I'm going to  
8 quote from page 38 of that transcript.

9 The Court asked him, quote:

10 Did you know at the time what you were doing  
11 was illegal?

12 The defendant said and I quote:

13 I know I was sending these items to Hizballah.

14 He didn't use the word Resistance. He  
15 used the word Hizballah.

16 As the Court is aware Special Agent  
17 Testani interviewed the defendant twice in 1998.

18 Joseph Testani was cross examined very  
19 vigorously. He testified in those interviews the  
20 defendant admitted to him that he was meeting with  
21 representatives, high level representatives of  
22 Hizballah and these high tech materials were going  
23 to Hizballah.

24 As the Court has stated, it's a serious  
25 offense. The guideline range is 235 to 293 months.

Sentence Hearing

1           Because of the plea agreement, the  
2           statutory cap is ten years, which is about half of  
3           the lower point of the guidelines.

4           In light of the seriousness of the  
5           offense, in light of the fact that the defendant had  
6           done this on multiple occasions, it's the  
7           government's position that the Court should impose a  
8           sentence of the maximum of ten years, maximum  
9           sentence permitted under the statute.

10           Thank you, Your Honor.

11           THE COURT: Thank you.

12           Mr. Assi, do you wish to address the Court  
13           in terms of allocution?

14           THE DEFENDANT: Good afternoon.

15           THE COURT: Good afternoon, sir.

16           THE DEFENDANT: Okay. Just to respond to  
17           Mr. Cares.

18           I may have said that I intended to send  
19           the items to Hizballah, but at the time I didn't  
20           know Hizballah was a designated terrorist  
21           organization. I didn't know it was illegal to send  
22           any items to Hizballah.

23           But the intent was to support The  
24           Resistance, not Hizballah.

25           I'm not aware of a new version of the PSI

Sentence Hearing

1 Report because --

2 THE COURT: The substance is the same.

3 THE DEFENDANT: If they're any changes, I  
4 would like to know. But --

5 THE COURT: If you like, Mr. Assi, I can  
6 provide you or Mr. Hampstead will provide you with  
7 exactly the same copy. It's substantively the same.

8 THE DEFENDANT: In 1998, the defendant was  
9 charged in a four count indictment. The relevant  
10 part of the indictment provides the following:

11 Count One Title 18 of the U.S. Code  
12 Section 2339B material support to a Designated  
13 Foreign Terrorist Organization.

14 At the time of the indictment in 1998, the  
15 statute read as follows:

16 Whoever within the United States or subject to  
17 the United States jurisdiction, knowingly  
18 provides material support or resources to  
19 foreign terrorist organization or attempts or  
20 conspires to do so, shall be fined under this  
21 type or imprisoned not more than ten years or  
22 both.

23 In the year 2004, to remove any possible  
24 ambiguity, the United States Senate Committee  
25 amended the statute to clarify the ambiguity.

Sentence Hearing

1           The amended version of the statute added  
2 this amendment:

3           That to violate this paragraph, the person must  
4 have knowledge that the organization is a  
5 Designated Foreign Terrorist Organization or  
6 that he has or The Organization has engaged or  
7 engages in terrorist activities or that The  
8 Organization has engaged or engages in  
9 terrorism.

10           The defendant finds the statute  
11 unconstitutional in its current form because it  
12 violates the Fifth Amendment due process  
13 requirement.

14           THE COURT: Mr. Assi, I don't mean to  
15 interrupt you unduly, but if -- I've told you I'm  
16 not going to hear legal argument.

17           THE DEFENDANT: I'm not talking legally,  
18 I'm just -- my opinion. I think my rights  
19 constitutional rights provided and I have all the  
20 right to present that to the Court.

21           THE COURT: You've presented that.

22           THE DEFENDANT: I did not present this  
23 particular issue, Your Honor.

24           THE COURT: Mr. Assi, if all you're going  
25 to do is making legal arguments during this time for

Sentence Hearing

1 allocution --

2 THE DEFENDANT: I'm not making legal  
3 arguments.

4 THE COURT: In terms of sentence, I'll  
5 give you five minutes to do that, but I'm not going  
6 to listen to anymore. This has been litigated.

7 THE DEFENDANT: This is the substance of  
8 this whole case, Your Honor.

9 I mean, if you want to give me some time  
10 to defend myself, this is the time, this is the  
11 substance.

12 THE COURT: Mr. Assi, the time for legal  
13 arguments is over.

14 This is the time, this is the time for  
15 sentencing, sir.

16 THE DEFENDANT: I'm going to talk about  
17 all of this.

18 THE COURT: Mr. Assi, I will give you five  
19 minutes to say whatever you want to say, but  
20 that's -- if you're going to simply make legal  
21 arguments about the constitutionality of the statute  
22 about the constitutionality of the guidelines, the  
23 applicability of the guidelines, we've been all  
24 through that exhaustively.

25 THE DEFENDANT: I did not present this

## Sentence Hearing

1 issue, Your Honor.

2 THE COURT: Go ahead. You have five  
3 minutes, sir.

4 THE DEFENDANT: In essence, this section  
5 of 2339B states there -- in essence it states:

6 There's no need -- A, there's no need for the  
7 defendant to know what he was doing was  
8 illegal.

9 B, there's no need for the defendant to know  
10 the organization he provided material support  
11 was a Designated Foreign Terrorist  
12 Organization.

13 C, the government could convict on the sheer  
14 knowledge of the terrorist activities or  
15 terrorism of the Designated Foreign Terrorist  
16 Organization as alleged by the government and  
17 as was the argument in this case.

18 In this case, finding the defendant guilty  
19 based on knowledge of government allegations  
20 because the defendant read about these  
21 allegations in the newspapers or magazines or  
22 heard about them on radio or t.v. is volitive  
23 of Fifth Amendment due process requirement of  
24 fair notice.

25 Government's allegation cannot logically be

## Sentence Hearing

1 fair warning guaranteed by Constitution.

2 Logically and legally, criminal liability may  
3 be imposed for violating penal laws not  
4 government allegations.

5 Are government allegations sufficient to  
6 establish what the law intends or what the law  
7 prohibits?

8 Are government allegations sufficient to  
9 provide the fair warning guaranteed by the  
10 Constitution?

11 In this case, the defendant did not know  
12 what he was doing was illegal and did not know that  
13 Hizballah was designated by the State Department as  
14 a terrorist organization.

15 Had the defendant sent these items to any  
16 other group other than Hizballah, everything would  
17 have been okay.

18 The defendant's due process rights were  
19 violated when he was subject to criminal liabilities  
20 under this statute based on the sheer number of  
21 government allegations of terrorist activities of  
22 Hizballah.

23 The defendant intended to support a  
24 legitimate resistance acting in self defense where  
25 such conduct is not forbidden or prohibitive, but

## Sentence Hearing

1     rather legitimate and innocent.

2                 On November 29, 2007, the defendant  
3     entered a plea of guilty to Count One of the  
4     August 4, 1998 indictment.

5                 The defendant was charged with intending  
6     to provide support to a terrorist organization.

7                 The defendant's sentencing range was to be  
8     determined by the Court's ruling on the  
9     applicability of the enhancement.

10                The sentencing enhancement, the U.S.S. --  
11     U.S. Sentencing Guidelines calls for a sentencing  
12     enhancement if the offense as a felony that involved  
13     or was intended to promote a federal crime of  
14     terrorism.

15                In the same thought, I believe my  
16     constitutional rights were violated under Title 18  
17     of United States Code Section 2332(b)(g)(5).

18                THE COURT: Mr. Assi, you have one minute  
19     remaining. If you wish to address the Court on any  
20     sentencing factor that you want me to consider, I'd  
21     be happy to hear that.

22                If you want to use your remaining minute  
23     to continue to make legal arguments, you're free to  
24     do that as well.

25                THE DEFENDANT: Well, the statute did not

## Sentence Hearing

1 put the defendant on notice that supporting a  
2 legitimate resistance is illegal or the resistance  
3 against a government who was in violation of the  
4 international laws for over 20 years was also  
5 illegal.

6 The federal crime of terrorism defines  
7 terrorism as an offense which is obviously an act in  
8 violation of criminal laws that is calculated to  
9 influence or affect government by intimidation of  
10 origin.

11 And the government, in this context,  
12 cannot in any way logically mean the government was  
13 in violation of international laws for over 20  
14 years.

15 THE COURT: All right. Mr. Assi, your  
16 time has expired.

17 THE DEFENDANT: I'm done with this. I  
18 just have some other issues.

19 THE COURT: One more minute, sir. Your  
20 time has expired. You spent your time making  
21 largely legal argument issues the Court has long ago  
22 addressed and resolved.

23 I was hoping to hear other things from  
24 you.

25 THE DEFENDANT: Well, the issue here is

Sentence Hearing

1 the statute did not put the defendant on notice that  
2 providing material support to a legitimate  
3 resistance against the government was in violation  
4 of international laws for over 20 years is illegal  
5 and this is a violation of the Defendant's Fifth  
6 Amendment due process right for fair notice.

7 So I don't know what is more important  
8 then this, Your Honor.

9 THE COURT: If that's what you want me to  
10 consider.

11 THE DEFENDANT: This is in my own defense.  
12 This is what I have to bring up. I'm defending  
13 myself, Your Honor.

14 THE COURT: Thank you, Mr. Assi.  
15 Appreciate your thoughts. I'm ready.

16 THE DEFENDANT: I would like to add just  
17 one more thing before I --

18 THE COURT: If this is another legal  
19 argument, Mr. Assi, I'm not going to hear it. I'm  
20 sorry.

21 THE DEFENDANT: Well, I know the Court  
22 knows the circumstances of the defendant's family,  
23 the his wife is a depressed schizophrenic.

24 The son was into drugs for the last two or  
25 three years and is struggling with that.

Sentence Hearing

1 THE COURT: I saw that.

2 THE DEFENDANT: His family circumstances  
3 as far as his mother and helping his children to go  
4 through college and be some use to them because  
5 they're struggling to make ends meet.

6 And, also, the defendant pleads to this  
7 Court to give him time served and give him the  
8 opportunity to go out in the world and be productive  
9 again as he was all along.

10 That's about what I have to say, Your  
11 Honor. I'm sorry that I've done something illegal  
12 as far as exporting some items I wasn't supposed to  
13 export. I do not intend to do any harm. And my  
14 intentions were with -- I intended. I'm sorry I  
15 found myself in this predicament.

16 And it's very ironic that the government  
17 who is engaged in two wars acting in self defense  
18 pursues a terrorism enhancement which is the worst  
19 that can be in this legal system, against a  
20 defendant who intended to support a legitimate act  
21 in self defense.

22 THE COURT: Thank you.

23 THE DEFENDANT: Thank you.

24 THE COURT: You can stay at the podium,  
25 sir. If you wish, you can stay at the podium.

## Sentence Hearing

1 All right, Mr. Assi, this has been a very  
2 lengthy proceeding going back to the initial  
3 indictment in 1998 when you then went to Lebanon for  
4 a period of about six years.

5 You came back -- as Mr. Thomas indicated,  
6 you came back on your own volition and you faced the  
7 charges. You've been incarcerated since that time.

8 In fashioning a sentence, as I always do,  
9 I have attempted to look not simply at the charges,  
10 the seriousness of the charges which are very  
11 serious, I'm not sure that even today as you stand  
12 here before me for sentencing, you recognize the  
13 seriousness of the charges. But these are serious  
14 charges and the world that we live in today these  
15 are very serious charges.

16 You were found at the airport back in 1998  
17 with two local positioning satellite modules in your  
18 luggage.

19 Additional luggage revealed you had some  
20 seven pairs of very advanced night vision goggles  
21 and thermal imaging scope. These are not -- this is  
22 not equipment designed for benign uses.

23 For an American citizen as you were to  
24 travel to Lebanon for whatever your reasons, however  
25 deeply felt they were, to help advance the cause of

Sentence Hearing

1 Hizballah.

2 THE DEFENDANT: It was the cause of the  
3 people of Lebanon, Your Honor.

4 THE COURT: For whatever reason it was,  
5 was a serious matter.

6 I would view it equally serious, equally  
7 serious, if a defendant were attempting to illegally  
8 advance the cause of any organization --

9 THE DEFENDANT: Illegally.

10 THE COURT: -- illegally, I would view it  
11 with equal seriousness.

12 The situation, obviously in the Middle  
13 East, is a powder keg and the people there on all  
14 sides, including Israel and its neighbors, do not  
15 need any assistance in igniting that powder keg from  
16 American citizens. In a nongovernmental, in a  
17 nongovernmental role, you took it on yourself to do  
18 this.

19 THE DEFENDANT: I took it upon myself to  
20 help people who are under occupation.

21 THE COURT: Mr. Assi, I've been very  
22 patient with you. I've heard from you. This is my  
23 opportunity to address you. I know how you feel.  
24 You've written me many, many letters about this.

25 I don't question the depth of your

Sentence Hearing

1 feeling. I do believe in doing what you did, you  
2 were misguided in enhancing or attempting to  
3 enhance, anyway, what is already a very precarious  
4 and dangerous situation in the Middle East.

5 THE DEFENDANT: It was --

6 THE COURT: Mr. Assi, please.

7 THE DEFENDANT: I'm sorry.

8 THE COURT: I've listened to you very  
9 patiently.

10 THE DEFENDANT: I'm sorry.

11 THE COURT: These are extremely serious  
12 activities and the government cannot simply, the  
13 American government cannot simply allow its citizens  
14 to be freelance suppliers without -- in violation of  
15 statutes of these kinds of activities.

16 So I have set forth in numerous opinions  
17 the legal reasoning why I believe these statutes are  
18 not unconstitutional.

19 And I set forth in an exhaustive opinion  
20 just two months ago, my view on -- after listening  
21 to the evidence, my view on the applicability of the  
22 guideline range. But that's not what we're here for  
23 today.

24 What we're here for today is sentencing.  
25 And as I always do at sentence, I try to look at

## Sentence Hearing

1 everything about the defendant, the good things and  
2 not so good things.

3 I try to have some understanding of the  
4 defendant's total life. I have to then balance that  
5 against the seriousness of the criminal activities  
6 involved and the ramifications or potential  
7 ramifications of those activities. So that's what I  
8 always try to do.

9 In that context, your -- letters from your  
10 many family members and friends of longstanding is  
11 very helpful in understanding you.

12 THE DEFENDANT: Thanks.

13 THE COURT: I was particularly struck by  
14 the letter I received from your eldest son, I  
15 believe Abraham. He's obviously a young man of  
16 great intellect and ambition. And I wish him --  
17 indeed, I wish your entire family all the best.

18 THE DEFENDANT: Thanks.

19 THE COURT: He said a number of things in  
20 the letter about you that really struck me. And as  
21 a person, as a father, that should give you some  
22 solace for the impact that you've had on his life,  
23 as well as, I assume, on your other two children.

24 It's a very, it's a very moving letter.  
25 And as I said, I conducted a sentencing hearing

Sentence Hearing

1 before you came up to another gentleman here.

2 And as I said to some measure for you as  
3 is true of all of us, our children are the measure  
4 of our lives as much as anything else we do here.  
5 For that, I'm sure you can take some solace.

6 THE DEFENDANT: Thank you.

7 THE COURT: And I balance the picture that  
8 I get of you here in these letters against the  
9 activities that you were engaged in.

10 I think that your depth of feeling for  
11 what you characterize as the resistance and some of  
12 the political considerations that you've spelled out  
13 over came your judgment.

14 Until you became involved in these  
15 activities, you were very much living a life of the  
16 American dream.

17 You came here as an immigrant with very  
18 little, you educated yourself, went to a number of  
19 different schools culminating with a master's degree  
20 from Wayne State University.

21 You then began a career that was  
22 successful. You had a responsible job with Ford  
23 Motor Company. And from everything that I can see,  
24 you were doing well.

25 At some point, you allowed the depth of

## Sentence Hearing

1 your feeling for what was happening in your homeland  
2 to overcome your judgment. And to -- this compelled  
3 you to embark upon activities that bring you before  
4 the Court today.

5           These were serious misjudgments. I'm not  
6 sure even today you understand them, but they were  
7 serious misjudgments.

8           They're misjudgments that have taken you  
9 away from your career, from your larger community,  
10 and, unfortunately as well, from your family.

11           I only hope that when you complete your  
12 sentence and you return to your community and to  
13 your family, I hope you'll go back to the man you  
14 were, the man that the people in these letters, the  
15 person that people tell me about in their letters  
16 and not become so embittered and embroiled in all of  
17 these other issues you have on your mind that you're  
18 going to exercise more misjudgment and be returned,  
19 again, either to this court or some other court.

20           My strongest advice I can give you, sir,  
21 at this time, this will be probably the last time  
22 you and I have an opportunity to talk, is to  
23 complete your sentence, don't allow yourself to  
24 become embittered and embroiled in continuing  
25 enmeshed in all of these issues that are playing out

## Sentence Hearing

1 in the world political scene, geo-political scene  
2 and do what's important to you, which is to return  
3 to your family and return to your community.

4 The sentence I'm going to impose will  
5 allow you to do that. You'll have a chance to  
6 rejoin your community, to rejoin your family and to  
7 pick up again.

8 I hope you'll do that, sir, and not  
9 continue to be involved in these kind of activities  
10 that you feel so strongly about. That's the best  
11 advice I can give you.

12 THE DEFENDANT: Thank you.

13 THE COURT: In the matter of the United  
14 States of America versus Fawzi Mustapha Assi,  
15 criminal docket 98-80695, the Court begins by  
16 indicating that it will accept the plea agreement  
17 that the parties have arrived at and will sentence  
18 the defendant under the plea agreement.

19 As the Court has already indicated but  
20 wants to indicate in the context of sentencing,  
21 among the many considerations that the Court has  
22 looked at in arriving at an appropriate sentence is  
23 the fact that this plea agreement puts a ceiling or  
24 cap on a sentence for Mr. Assi of ten years. That's  
25 an agreement that he and his lawyer entered into

## Sentence Hearing

1 with the government. By accepting the plea  
2 agreement, I find that to be an appropriate  
3 limitation on sentence.

4 But it should not go without notice that  
5 had Mr. Assi not accepted this plea agreement and  
6 had he gone to trial and been convicted, he was  
7 facing a sentence of at least twice as long and  
8 perhaps longer.

9 So I, in imposing sentence, I consider  
10 that as well as all of the other items that Mr. Assi  
11 and I have talked about, as well as the sentencing  
12 guideline factors and the factors included in the  
13 sentencing statute.

14 With respect to Count One of the First  
15 Superseding Indictment, it is the judgment of this  
16 Court after considering the sentencing guidelines  
17 and the factors in those guidelines and the factors  
18 in the sentencing statute and the factors that I've  
19 discussed here on the record with Mr. Assi, it is  
20 the judgment of this Court that the defendant be  
21 committed to the custody of the Bureau of Prisons  
22 for a period of 120 months.

23 The Court recommends to the Bureau of  
24 Prisons that Mr. Assi be given credit for time  
25 served.

## Sentence Hearing

1 I am going to waive any imposition of a  
2 fine or costs of incarceration or costs of  
3 supervision due to the Court's finding that the  
4 defendant lacks the resources to satisfy such  
5 assessments and the Court's belief that any  
6 resources that the defendant and his family does  
7 have will be better spent supporting the family  
8 during Mr. Assi's period of incarceration.

9 The law does, however, require a special  
10 assessment of \$100 for each count of conviction;  
11 that is due and payable immediately.

12 Upon his release from imprisonment, he  
13 will be placed on a term of supervised release for a  
14 period of two years.

15 I am imposing the mandatory drug testing  
16 conditions after reviewing the substance abuse  
17 provisions in the Presentence Report.

18 While the defendant is on supervision, he  
19 will abide by all of the standard conditions of  
20 supervised release which have been adopted by this  
21 Court as well as the following special conditions.

22 Due to the defendant's history of  
23 substance abuse, he will participate in a program  
24 approved by his probation officer for substance  
25 abuse which may include testing to determine if he

## Sentence Hearing

1 has reverted to the use of drugs or alcohol. I'll  
2 leave that to his probation officer's discretion.

3 Due to the nature of the offense, the  
4 Court imposes the following special financial  
5 conditions.

6 The defendant will not incur any new  
7 credit charges or any open any additional lines of  
8 credit without the approval his probation officer.

9 He will provide his probation officer with  
10 access to any requested financial information.

11 If the defendant should be found to be  
12 deportable, he will not reenter the United States  
13 without the permission of the authorizing government  
14 agency and the Court.

15 MR. THOMAS: He is a citizen, judge.

16 THE COURT: I understand that. I don't  
17 think that he would be deported, he is a citizen. I  
18 think I'm required to include that. I don't  
19 anticipate he would be deported.

20 If he were to be deported, his supervised  
21 release period would then be unsupervised.

22 Mr. Assi, as we have discussed already,  
23 because I have now accepted the plea agreement and  
24 under the plea agreement as I construe it, you have  
25 agreed to waive any of your rights of appeal

## Sentence Hearing

1 concerning either your conviction or your sentence,  
2 with the exception of the Court's decision on the  
3 applicability of the terrorism enhancement under the  
4 guideline 3A1.4.

5 As I indicated earlier, there was I think  
6 some question about that after, within the four  
7 corners of the plea agreement.

8 However, I reviewed the transcript from  
9 the plea hearing and it's clear to me that it was  
10 your intention in entering into the plea agreement,  
11 you preserve your right to appeal the Court's  
12 decision on that one issue and I will ensure you  
13 have that right.

14 MR. THOMAS: Judge, could you recommend  
15 the drug program for him since there is this  
16 history?

17 THE COURT: I'll recommend the Intensive  
18 Drug Treatment Program.

19 MR. THOMAS: Also, if you could, I know  
20 we --

21 THE COURT: During his period of  
22 incarceration --

23 MR. THOMAS: I don't know if there is one  
24 at Milan. He wants to be close to his family.

25 THE COURT: I'll recommend Milan as his

Sentence Hearing

1 designated facility.

2 THE DEFENDANT: Thanks.

3 THE COURT: That would facilitate  
4 visitation with your family. Mr. Assi, I'll  
5 recommend that.

6 At any rate with respect to all other  
7 issues, you have waived your right of appeal of  
8 either your conviction or your sentence.

9 Anything else concerning sentence or any  
10 other matter from the government?

11 MR. CARES: The government moves to  
12 dismiss the remaining counts.

13 THE COURT: Provide me with a stipulated  
14 order.

15 MR. THOMAS: He has mentioned to me The  
16 Life Connection Program at Milan.

17 THE COURT: Michigan program? I'm sorry?

18 MR. THOMAS: Life Connection. It's  
19 supposed to be a new program there. Apparently,  
20 he's aware of it and wants to --

21 THE COURT: I'm not familiar with it.  
22 What is it?

23 Do you know what it is, Mr. Assi?

24 THE DEFENDANT: It has something to do  
25 with religion and beliefs.

Sentence Hearing

1 THE COURT: If it's something to do, I'll  
2 recommend it. You understand all these  
3 recommendations are simply that. It's up to the  
4 Bureau of Prisons.

5 THE DEFENDANT: Yeah. I'm afraid that  
6 because of this, the nature of this charge and the  
7 criminal history and I don't know if you want to  
8 reflect it on the record or not, criminal history  
9 does make a big difference as to --

10 THE COURT: Well your --

11 THE DEFENDANT: -- my designation as to  
12 what --

13 THE COURT: You're a category one, sir,  
14 which is a low category of criminal history.

15 THE DEFENDANT: Thank you.

16 THE COURT: So I'll recommend that you  
17 participate in these programs.

18 THE DEFENDANT: Thanks a lot.

19 THE COURT: You'll be able to participate  
20 in them. I think it would be helpful for you to  
21 participate in the Intensive Drug Treatment  
22 Program. The therapy provided in those programs can  
23 be helpful on many levels.

24 Anything else, Mr. Thomas?

25 MR. THOMAS: Well, judge, he does have the

## Sentence Hearing

1 right to appeal.

2 We have had, obviously, a lot of  
3 litigation relating to the issue on appeal the  
4 defendant has asked to supplement and sometimes  
5 represent himself.

6 THE COURT: I was going to advise him of  
7 his rights with that.

8 MR. THOMAS: Reflecting on that, I'd  
9 ask -- at this point, I think it probably  
10 appropriate to appoint someone to represent him on  
11 appeal as opposed to myself.

12 THE COURT: Let me advise him of what his  
13 rights are.

14 Mr. Assi, I've told you what your right of  
15 appeal that remains is with respect to the  
16 applicability of the terrorism enhancement.

17 If you wish to appeal, you have ten days  
18 from the entry of the judgment of conviction to  
19 appeal.

20 If you want to represent yourself on  
21 appeal, you are entitled to do that. As I have  
22 through the course of this litigation, I advised you  
23 that I think that would be a very bad idea to do.

24 I think it's helpful, an appellate lawyer  
25 would be beneficial for you.

Sentence Hearing

1 I advise you not to try to represent  
2 yourself on appeal. If you wish to appeal, I will  
3 be happy to appoint appellate counsel for you.

4 MR. THOMAS: I'll see to it the notice is  
5 filed. I want to make sure that is done within the  
6 ten day period.

7 THE COURT: Mr. Thomas here has indicated  
8 he believes it would be in your best interest to  
9 have a different lawyer represent you on appeal.

10 THE DEFENDANT: He's a very busy man.

11 MR. THOMAS: But you like me, right?

12 THE DEFENDANT: Sure, I like him.

13 THE COURT: But if you want another, a  
14 different lawyer, I'll be happy to appoint a lawyer  
15 who specializes in appellate issues.

16 THE DEFENDANT: Yes, Your Honor. I do  
17 need an attorney.

18 THE COURT: We will do that.  
19 Anything further?

20 MR. THOMAS: No, thank you, judge.

21 THE DEFENDANT: Just would like to thank  
22 you for your patience and for your humorous advices.  
23 And I'm sorry for any trouble I've made or caused.

24 THE COURT: You've not caused me any  
25 trouble, Mr. Assi. You've done what defendants

Sentence Hearing

1 often do, which is vigorously try to ensure all your  
2 rights are protected.

3 THE DEFENDANT: Thank you, Your Honor.  
4

5 (This hearing concluded at 1:25 p.m.)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF COURT REPORTER

I certify that the foregoing is a correct transcript from reported proceedings in the above-entitled matter.

s/Carol S. Sapala, FCRR, RMR Feb. 11, 2009